

The Senate Insurance and Labor Committee offered the following substitute to SB 406:

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life settlements, so as to revise certain definitions; to provide additional grounds for the suspension, revocation, or refusal to renew the license of life insurance producers; to make editorial revisions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life settlements, is amended by striking paragraphs (5), (8), and (13) and inserting in lieu thereof new paragraphs (5), (8), and (13) to read as follows:

"(5) 'Fraudulent life settlement act' includes:

(A) Acts or omissions committed by a person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, engages, or permits its employees or its agents to engage; in acts including:

(i) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, financing entity, insurer, insurance producer, or another person; false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(I) An application for the issuance of a life settlement contract or policy;

(II) The underwriting of a life settlement contract or policy;

(III) A claim for payment or benefit pursuant to a life settlement contract or policy;

(IV) Premiums paid on a policy;

(V) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;

(VI) The reinstatement or conversion of a policy;

(VII) ~~The~~ in the solicitation, offer, effectuation, or sale of a life settlement contract or policy;

(VIII) The issuance of written evidence of a life settlement contract or insurance; or

(IX) A financing transaction; or

(ii) Employing any device, scheme, or artifice to defraud related to purchased policies; or

(B) ~~In the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or its agents to commit any of the following acts: Any of the following acts when committed or permitted by any person or its employees or agents in the furtherance of a fraud or to prevent the detection of a fraud:~~

(i) ~~Removing, concealing, altering, destroying, or sequestering~~ Remove, conceal, alter, destroy, or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of life settlements;

(ii) ~~Misrepresenting or concealing~~ Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(iii) ~~Transacting~~ Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements; or

(iv) ~~Filing~~ File with the Commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise ~~conceal~~ concealing information about a material fact from the Commissioner;

(C) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, life insurance producer, insurer, insured, seller, policy owner, or another person engaged in the business of life settlements or insurance;

(D) Recklessly entering into, negotiating, or otherwise dealing in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning a fact material to the policy, or by concealing, for the purpose of misleading another, information concerning a fact material to the policy, where the seller or the seller's agent intended to defraud the insurance company that issued the policy. As used in this subparagraph, 'recklessly' means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, this disregard involving a gross deviation from acceptable standards of conduct; or

(E) Facilitating the change of state of residency of a policy or seller to avoid the provisions of this chapter; or

(F) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this paragraph."

"(8) 'Life settlement provider' means a person, other than a seller, who in this state, from this state, or with a seller who is a resident of this state enters into or effectuates a life settlement contract. Life settlement provider does not include:

(A) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan;

(B) The issuer of a policy providing accelerated benefits pursuant to the policy;

(C) An authorized or eligible insurer that provides stop-loss coverage to a life settlement provider, financing entity, special purpose entity, or related provider trust;

(D) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of policies for any value less than the expected death benefit;

(E) A financing entity;

(F) A special purpose entity;

(G) A related provider trust; or

(H) An accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a purchased policy from a life settlement provider."

"(13) 'Seller' means the owner of a policy ~~who is a resident of this state~~ who enters or seeks to enter into a life settlement contract. For the purposes of this chapter, a seller is not limited to an owner of a policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners. Seller does not include:

(A) A licensee as provided by this chapter, including a life insurance producer;

(B) A qualified institutional buyer as defined, respectively, in Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as amended;

(C) A financing entity;

(D) A special purpose entity; or

(E) A related provider trust."

SECTION 2.

Said chapter is further amended by striking subsection (b) of Code Section 33-59-4, relating to denial, revocation, suspension, or refusal of licensees, and inserting in lieu thereof a new subsection (b) to read as follows:

“(b) The Commissioner may suspend, revoke, or refuse to renew the license of a life insurance producer if the Commissioner finds that such life insurance producer has:

(1) violated Violated the provisions of this chapter; or

(2) Received a fee, commission, or other valuable consideration for his or her services with respect to life settlement transactions that involved unlicensed life settlement providers or persons who offered or attempted to negotiate on behalf of another person a life settlement contract and who were not life insurance producers."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.